

**Transportation Conformity Determination Report for
the 1997 ozone NAAQS for**

**The Indiana Department
of Transportation
(INDOT)**

***Statewide Transportation Improvement
Program Fiscal Years 2024 -2028***

*For Project Listings in
Greene and Jackson Counties*

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BACKGROUND

Clean Air Act (CAA) section 176(c) (42 U.S.C. 7506(c)) requires that federally funded or approved highway and transit activities are consistent with (“conform to”) the purpose of the State Implementation Plan (SIP). Conformity to the purpose of the SIP means that transportation activities will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the relevant NAAQS or any interim milestones. 42 U.S.C. 7506(c)(1). EPA’s transportation conformity rules establish the criteria and procedures for determining whether metropolitan transportation plans, transportation improvement programs (TIPs), and federally supported highway and transit projects conform to the SIP. 40 CFR Parts 51.390 and 93.

On February 16, 2018, the United States Court of Appeals for the District of Columbia Circuit in *South Coast Air Quality Mgmt. District v. EPA* (“*South Coast II*,” 882 F.3d 1138) held that transportation conformity determinations must be made in areas that were either nonattainment or maintenance for the 1997 ozone national ambient air quality standard (NAAQS) and attainment for the 2008 ozone NAAQS when the 1997 ozone NAAQS was revoked. These conformity determinations are required in these areas after February 16, 2019. Greene and Jackson Counties in Indiana were under *maintenance* at the time of the 1997 ozone NAAQS revocation on April 6, 2015 and were also designated attainment for the 2008 ozone NAAQS on May 21, 2012. Therefore, per the *South Coast II* decision, this conformity determination is being made for the 1997 ozone NAAQS on the project listings in the FY 2024 – 2028 INDOT State Transportation Improvement Program (STIP) for the project listings in Greene and Jackson Counties.

This conformity determination was completed consistent with CAA requirements, existing associated regulations at 40 CFR Parts 51.390 and 93, and the *South Coast II* decision, according to EPA’s *Transportation Conformity Guidance for the South Coast II Court Decision* issued on November 29, 2018.

1.0 Background and Conformity Process

The concept of transportation conformity was introduced in the Clean Air Act (CAA) of 1977, which included a provision to ensure that transportation investments conform to a State implementation plan (SIP) for meeting the Federal air quality standards. Conformity requirements were made substantially more rigorous in the CAA Amendments of 1990. The transportation conformity regulations that detail implementation of the CAA requirements were first issued in November 1993, and have been amended several times. The regulations establish the criteria and procedures for

transportation agencies to demonstrate that air pollutant emissions from metropolitan transportation plans, transportation improvement programs and projects are consistent with (“conform to”) the State’s air quality goals in the SIP. This document has been prepared for State and local officials who are involved in decision making on transportation investments.

Transportation conformity is required under CAA Section 176(c) to ensure that Federally-supported transportation activities are consistent with (“conform to”) the purpose of a State’s SIP. Transportation conformity establishes the framework for improving air quality to protect public health and the environment. Conformity to the purpose of the SIP means Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) funding and approvals are given to highway and transit activities that will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the relevant air quality standard, or any interim milestone.

On December 29, 2005, the EPA, in 70 FR 69085, published the final rule for the Greene and Jackson Counties areas establishing a determination of attainment and a re-designation of Greene and Jackson Counties to attainment of the 8-hour ozone standard.

Both Greene and Jackson Counties in Indiana were defined as an orphan maintenance area in the Court decision as the region was a maintenance area for the 1997 Ozone NAAQS at the time of its revocation (80 FR 12264, March 6, 2015) and was designated attainment for the 2008 Ozone NAAQS in EPA’s original designations for the NAAQS (77 FR 30160, May 21, 2012).

2.0 INDOT Fiscal Year 2024 – 2028 Statewide Transportation Improvement Program

The Indiana Department of Transportation (INDOT) has adopted a new Statewide Transportation Program for Fiscal Years 2024 – 2028 (STIP) which necessitates this conformity determination process for the project listings in Greene and Jackson Counties.

3.0 Transportation Conformity Determination: General Process

Per the court’s decision in *South Coast II*, beginning February 16, 2019, a transportation conformity determination for the 1997 ozone NAAQS will be needed in 1997 ozone NAAQS nonattainment and maintenance areas identified by EPA¹ for certain transportation activities, including non-exempt FHWA/FTA projects in isolated rural orphan areas. Once US DOT makes its 1997 ozone NAAQS conformity determination for the Greene and Jackson County projects in the FY 2024 – 2028 INDOT STIP, conformity will be required no less frequently than every four years. This conformity determination report will address transportation conformity for the Greene and Jackson County STIP project listing.

4.0 Transportation Conformity Requirements

4.1 Overview

On November 29, 2018, EPA issued **Transportation Conformity Guidance for the South Coast II Court Decision**² (EPA-420-B-18-050, November 2018) that addresses how transportation conformity determinations can be made in areas that were nonattainment or maintenance for the 1997 ozone NAAQS when the 1997 ozone NAAQS was revoked, but were designated attainment for the 2008 ozone NAAQS in EPA's original designations for this NAAQS (May 21, 2012).

The transportation conformity regulation at 40 CFR 93.109 sets forth the criteria and procedures for determining conformity. The conformity criteria for nonexempt FHWA/FTA projects in isolated rural orphan areas include: latest planning assumptions (93.110), latest emissions model (93.111), consultation (93.112), transportation control measures (93.113(d)), Currently conforming plan and TIP (93.114), CO, PM₁₀ and PM_{2.5} hot spots (93.116), PM₁₀ and PM_{2.5} control measure (93.117), and emissions budget and/or interim emissions (93.118 and/or 93.119).

For the 1997 ozone NAAQS areas, transportation conformity for the 1997 ozone NAAQS can be demonstrated without a regional emissions analysis, per 40 CFR 93.109(c). This provision states that the regional emissions analysis requirement applies one year after the effective date of EPA's nonattainment designation for a NAAQS and until the effective date of revocation of such NAAQS for an area. The 1997 ozone NAAQS revocation was effective on April 6, 2015, and the *South Coast II* court upheld the revocation. As no regional emission analysis is required for this conformity determination, there is no requirement to use the latest emissions model, or budget or interim emissions tests. Furthermore, the hot-spot analysis requirement (93.116) and PM control measures requirement (93.117) apply only for PM NAAQS.

Therefore, transportation conformity for the 1997 ozone NAAQS for the Statewide Transportation Improvement Program for the projects in Greene and Jackson Counties can be demonstrated by showing the remaining requirements in Table 1 in 40 CFR 93.109 have been met. These requirements, which are laid out in Section 2.7 of EPA's guidance and addressed below, include:

- ☐ Latest planning assumptions (93.110)
- ☐ Consultation (93.112)
- ☐ Transportation Control Measures (93.113)

4.2 Latest Planning Assumptions

The use of latest planning assumptions in 40 CFR 93.110 of the conformity rule generally apply to regional emissions analysis. In the 1997 ozone NAAQS areas, the use of latest planning assumptions requirement applies to assumptions about transportation control measures (TCMs) in an approved SIP.

The Indiana SIP does not include any TCMs for the Greene and Jackson County Orphan Maintenance Areas, see also Section 4.4.

4.3 Consultation Requirements

The consultation requirements in 40 CFR 93.112 were addressed both for interagency consultation and public consultation.

An Interagency Consultation Group (ICG), including FHWA, EPA, FTA, IDEM and INDOT, reviewed the draft copy of this document concurrent with a 15-day public comment period to ensure all requirements of the conformity determination have been met. The ICG members have the opportunity to request a conference call should an agency want to discuss the document with the ICG.

Public consultation/comment was conducted consistent with planning rule requirements in 23 CFR 450. The document is publicized in accordance with the INDOT's Public Involvement Process including posting on INDOT's website <https://www.in.gov/indot/3132.htm> from June 13 to June 30, 2023.

4.4 Timely Implementation of TCMs

The Indiana SIP does not include any TCMs for the Greene and Jackson County Orphan Maintenance Areas.

Conclusion

The conformity determination document concludes that the INDOT Fiscal Year 2024 – 2028 Statewide Transportation Improvement Program for the project listings in Greene and Jackson Counties demonstrates that that these projects meet the Clean Air Act and Transportation Conformity rule requirements for the 1997 ozone NAAQS. All of the applicable criteria and procedures in the U.S. EPA guidance to assist in the implementation of the February 16, 2018, decision from the United States Court of Appeals for the District of Columbia Circuit in *South Coast Air Quality Mgmt. District v. EPA* (“*South Coast II*,” 882 F.3d 1138) have been satisfied.